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October 17, 2023

**By ECF**

Hon. Jesse M. Furman, U.S.D.J.  
United States District Court  
40 Centre Street, Room 2202  
New York, New York 10007

**Re: Jeffrey Frommer, et al. v. MoneyLion Technologies Inc., et ano.  
Case No. 23-cv-06339 (JMF)**

Dear Judge Furman:

This firm represents Defendant and Counterclaim-Plaintiff MoneyLion Technologies Inc. (“MLTI”) and Third-Party Plaintiff MoneyLion Inc. (“MLI” and together with MLTI, “MoneyLion”). We write with regard to the Amended Counterclaims and Third Party Complaint filed on behalf of MoneyLion on October 13, 2023 (Dkt. No. 54).

On September 21, 2023, Plaintiffs and Counterclaim/Third-Party Defendants Jeffrey Frommer, Lyusen (Louis) Krubich, Daniel Fried, and Pat Capra filed a motion to dismiss MoneyLion’s original Counterclaims and Third Party Complaint (Dkt. Nos. 50-52). By order dated September 22, 2023 (Dkt. No. 53), the Court ordered that MoneyLion “shall file any Amended Counterclaims and Amended Third Party Complaint by October 13, 2023” together with “a redline showing all differences between the original and revised filing.”

On October 13, 2023, consistent with the Court’s order, MoneyLion filed its Amended Counterclaims and Third Party Complaint together with the requested redline showing all differences between the original Counterclaims and Third Party Complaint and the amended version (Dkt. Nos. 54 and 54-1, respectively). MLTI made no changes to its Answer, as demonstrated by the redline (Dkt. No. 54-1). However, upon attempting to file the amended pleading, MoneyLion’s counsel learned that the Court’s e-filing system (NextGen CM/ECF Release 1.7) does not include an option for filing an “Answer with Amended Counterclaims and Amended Third Party Complaint.” The only way to file the amended pleading was to file the document as an “Amended” Answer with Counterclaims and a Third Party Complaint, which MoneyLion did.

Yesterday, on October 16, 2023, we received a Notice to Attorney Regarding Deficient Pleading, directing MoneyLion to refile Dkt. No. 54 because the Court’s September 22, 2023 Order had not permitted the filing of an Amended Answer. MoneyLion’s counsel promptly contacted the ECF Help Desk and was redirected to the Case Opening Department. The Case Opening Department clerk confirmed that there is no option within PACER to file an Answer with Amended Counterclaims and Amended Third Party Complaint, and informed the undersigned that the Clerk cannot accept the



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as-filed version of Dkt. No. 54 absent a Court order directing it to do so, because an “Amended Answer” has not been permitted by the Court at this time—notwithstanding that MLTI did not in fact amend its Answer.<sup>1</sup>

For the above reasons, we respectfully request that the Court issue an Order directing the Clerk to accept Dkt. No. 54 as filed.<sup>2</sup>

Your Honor’s attention to this application is greatly appreciated.

Respectfully submitted,

A handwritten signature in blue ink that reads "Alisa Benintendi".

Alisa Benintendi

cc: All Counsel of Record

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<sup>1</sup> In the alternative, the Case Opening Department clerk suggested that Dkt. No. 54 be re-filed twice, once as MLTI’s “Amended Counterclaims” and once as MLI’s “Amended Third Party Complaint.” This would result in *three* operative pleadings on the docket—the original Answer with the unamended Counterclaims and Third Party Complaint (Dkt. No. 43), followed by two identical documents, one of which would be labeled as MLTI’s “Amended Counterclaims” and one of which would be labeled as MLI’s “Amended Third Party Complaint.” This would have resulted in complications in subsequent filings by all parties and potential confusion for both the Court and the parties in this litigation.

<sup>2</sup> On October 16, 2023, the undersigned contacted Chambers by telephone to explain the above-described issue, and on October 17, 2023, the undersigned was directed by Chambers to file the instant letter requesting the Court’s assistance.